

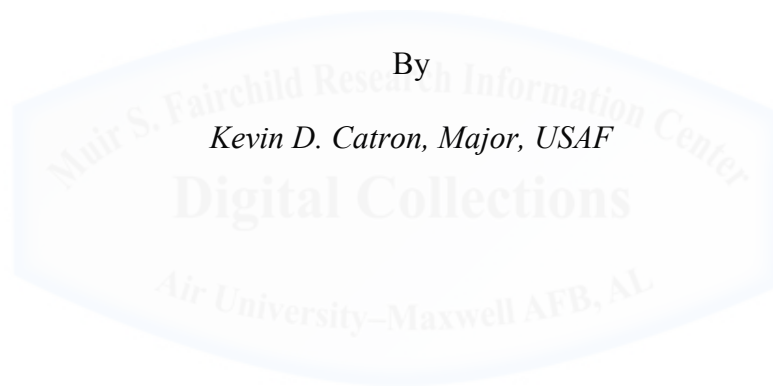
AIR COMMAND AND STAFF COLLEGE

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**The Ironic Hypocrisy of Killing: How Sanctioned Counterinsurgency Policies
of the Philippine War Ends in the Court-Martial of Major Littleton Waller**

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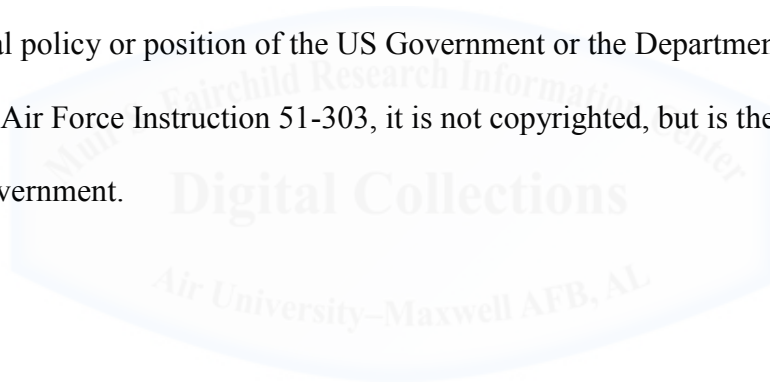
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By late 1901, the American occupation of the Philippine Islands was entering its third year of combat operations. A military and diplomatic policy of benevolent assimilation towards the Filipinos was beginning to wane as the United States Administration was losing patience with the guerrilla warfare being waged by the Filipino insurgents. The massacre of forty-eight U.S. soldiers at Balangiga on the island of Samar by insurgents and indigenous locals ignited a tinderbox of transformation of U.S. military operations and policy in the Philippines. Brigadier General Jacob Smith, a man of reputed questionable moral character, was placed in command of the operations on the island of Samar, and issued the infamous order to his subordinate, Maj Littleton Waller, to “punish treachery with death”, to “kill and burn”, and to turn the interior of Samar into “a howling wilderness.” As Maj Waller lead a befuddled march into the interior of Samar, native guides seized at the opportunity to weaken the expedition through treacherous deceit and the attempted murder of Waller’s marines. As a result, Maj Waller executed eleven of these guides. At a time when the anti-imperialist fervor was at its highest during the Congressional Hearings on atrocities committed in the Philippines, Maj Waller was forced to face a court-martial for his actions in January 1902, and was labeled the “butcher of Samar.”

The court-martial of Maj Waller undoubtedly cast a dark shadow over an otherwise successful insurgency campaign by the American military. However, his actions cannot be viewed in isolation of the underlying negative cultural predispositions of the United States towards the Philippines, or how those conditions impacted the aggressive actions and orders of U.S. military commanders against the insurgents. Both civilian and military leaders dehumanized the Philippine people through predisposed racial socioeconomic stereotypes which were not uncommon in that period of history. As senior military leaders allowed these beliefs to permeate military operations, however, they too were motivated to use brutal methods of

suppression such as village burnings, torture and executions. Coupled with General Order 100 which seemingly authorized field commanders to utilize harsh and brutal tactics, the Philippine War was the perfect storm, resulting in death and destruction on a scale that extends well beyond the incidents involving Maj Waller.

This paper will analyze how the cultural predispositions of the early Twentieth Century served as the foundation for harsh and brutal tactics against the insurgents in the Philippines. While history often portrays Maj Waller's actions as an ill-conceived murderous rampage, a closer analysis reveals how his actions were the result of authorized harsh treatment against a people commonly dehumanized by his military and civilian superiors. While no defense will be made in support for Maj Waller specifically, when taken into context, his actions are consistent with the legal orders he received and conformed to the prescribed tactical operating procedures which stemmed from those negative cultural predispositions.

The "Benevolent Assimilation" Policy

Emboldened by the defeat of the Spanish fleet at Manila Bay in May 1898, President William McKinley instructed Secretary of War Russell Alger to "send an army of occupation to the Philippines," to defeat the Spanish power in that theatre and to give "order and security to the islands while in the possession of the United States."¹ Aside from orders to "occupy" the islands, the McKinley administration offered little guidance on how the military were to operate in the Philippines. Even the reason why an occupation force was sent to the Philippines is subject to debate with one historian going so far as to surmise that American involvement was accidental and incremental.² Historian Graham Cosmas states that the President "could do little but ride the whirlwind and cope with the chaos it left behind."³ What is unmistakable, however, is that the assigned commanding officer, Maj Gen Wesley Merritt, did have very little guidance from his

civilian leaders on the actual mission the military was to play in the Philippines.⁴ This disconnect between the politicians planning the occupation and the military officers executing the missions increased the confusion among senior military officers and set the stage for the entire campaign.⁵

A formal policy on U.S. operations was not made until December, 1898, months after U.S. troops had already arrived and began operations in the Philippines. By then, the conventional battles with the Philippine resistance gave way to their adaptation of guerilla tactics, similar to those used against the Spanish occupation. In announcing his policy of benevolent assimilation and “in the fulfillment of the rights of sovereignty thus acquired” over the islands from the Spanish defeat, President McKinley thrust the military occupation into the unfamiliar role of trying to win the “confidence, respect, and affection of the inhabitants” while simultaneously trying to crush a rising insurgency.⁶

While President McKinley attempted to establish conciliation as the cornerstone of military policy in the Philippines, in reality, the military were forced to adapt a dual policy of civic assistance and severe anti-insurrection measures against battle tested guerrillas.⁷ It is little wonder why this policy has been called the “Pandora box of Philippine woes.”⁸ The military soldier was simply not trained or equipped, in 1898, to wage a dual war for the “hearts and minds” of the Filipino people and a military campaign against insurgents. The contradictions of this splintered approach became all too apparent as conciliation transitioned into a brutal and ruthless campaign against the insurgents. Underlying this metamorphous were the cultural beliefs from the United States that dehumanized the Filipino, thus legitimizing, in the minds of U.S. soldiers, brutal measures such as burning villages, torture and executions.⁹

Negative Cultural and Racist Stereotypes Sets the Stage for a Brutal Repression

From the beginning of the Philippine campaign, U.S. personnel brought to the islands negative and stereotypical racial predispositions that were to permeate their interactions with locals and strengthen their resolve to commit more atrocities as the war progressed. This is hardly surprising considering the fact that the average soldier was less than qualified to play the diplomatic role.¹⁰ Soldiers often referred to the Filipinos in derogatory dehumanizing terms, calling them “niggers” and “googoos”, usually in their presence.¹¹ These attitudes undoubtedly stemmed from cultural perception that violence was the only way to deal with “Asiatics”.¹² When writing home, one soldier expressed the feeling of others when he wrote, “If they would turn the boys loose there wouldint [*sic*] be a nigger left in Manila twelve hours after ...”¹³ Others described “itching to get at the niggers” and that “picking off niggers in the water was more fun than a turkey shoot.”¹⁴

It was not just the average soldier who bore negative predispositions and beliefs about the Philippine people. From President McKinley to senators there existed the belief that Filipinos were incapable of self-governance, that they needed American intervention and guidance, and needed to be civilized.¹⁵ Theodore Roosevelt, then Vice President during the early part of the Philippine War, often referred to the Filipino’s as “savages” and believed Anglo-Saxons had the special ability to govern “backward” people.¹⁶ In fact, Roosevelt believed in the “white man’s burden”, a phrase referring to the innate moral responsibility of the Anglo-Saxon to uplift the entire human race.¹⁷

One general officer testified before Congress that his troop’s interactions with Filipinos was like dealing with children and that all the locals wanted was to “go to cock fights, gamble and whet up their bolos.”¹⁸ Major General Ewell Otis, then commander of all U.S. troops in the

Philippines, stated that shooting Philippine “savages” was the best means of preserving peace.¹⁹ Even in the United States Senate there existed a prevailing belief that the Americans were justified in harsh treatment against the Philippine people since they were an inferior race in the scales of civilization.²⁰ Indeed, it was these hearings before the Senate on the Philippines that vividly show the effects of American racial prejudice in making this cultural contact ferociously and unnecessarily violent.²¹

Given the period of history, these cultural beliefs and biases are not surprising. The United States had recently just conquered its own West, where harsh tactics and treatments of Native Americans were morally sanctified from podiums and pulpits across the land.²² The prevailing military and civilian thought was undoubtedly influenced by these recent events where senior military commanders in the Philippines had spent as long as twenty years battling Native Americans.²³ These cultural perspectives and predisposed negative connotations about the Filipino set the stage for sanctioned violence and harsh treatment; consciously or subconsciously, these perceptions would justify the use of torture and killings.

Sanctioned Violence as a Military Policy

With the dehumanizing cultural views of the Filipino people by both senior civilian and military leaders, it is not hard to imagine how such beliefs were transformed into military practice and tactical operations. While some junior officers were shown to have attempted the pacification of the Philippine people through benevolent assimilation, the vast majority of senior military commanders either expressly ordered the harsh treatment of the Philippine insurgents, or tacitly condoned such behavior.²⁴ Of no greater importance on this issue is the influence of Theodore Roosevelt.

By the fall of 1900, many officers in the Philippines were convinced that the conciliatory approach was doomed to fail where even William Taft, the appointed Governor of the Philippines recognized that war fought with “white suits and collars” would have to be replaced with stricter tactics.²⁵ Major John Henry Parker was one of these officers in the Philippines who supported sterner measures against the insurrection. A West Point graduate and veteran of the Cuba campaign, he was also a close personal friend of Roosevelt, then Vice-President of the United States. With his back-channel access to Roosevelt, Maj Parker was in a position to shape the administration’s new policy.²⁶ Maj Parker wrote that the current policy was the “fundamental obstruction of complete pacification” and harsher tactics were necessary to break all resistance.²⁷ Using General Order (GO) 100, a Civil War era code on the rules of warfare, Maj Parker justified the use of harsh tactics such as summary executions as both legal and militarily necessary.²⁸ Roosevelt, who would soon become President, agreed and forwarded Parker’s blueprint for a tough new strategy to Secretary of War Elihu Root.²⁹ While Roosevelt’s influence undoubtedly bore great significance on the increase of harsh tactics in the Philippines, ample evidence exists to demonstrate that senior field commanders were already implementing greater flexibility on the use of sterner measures.³⁰

Many senior military commanders believed that the Philippines would need the “bayonet rule” for several more years, where “a few more funerals” would force upon the populous enough pain and discomfort to acquiesce to American rule.³¹ When Major General Arthur MacArthur took command of the Philippines from Major General Otis in 1900, he realized that harsh tactics, similar to those used against the Indians in the American West, were needed.³² While originally hesitant to wage “unrestricted warfare”, MacArthur nonetheless notified his department commanders in December 1900 of a “new and more stringent policy” with the grim

notice that “whenever action is necessary the more drastic the application the better.”³³

Specifically, MacArthur was giving notice that the insurgents battling the Americans would be treated as guerrillas and thus no longer treated as soldiers but as “criminals” and “murders”.³⁴ It was clear that the guerrilla strategy employed by the Filipino *insurrectos* was starting to take an emotional and psychological toll on the Americans. While this shift to an unlawful combatant status allowed the Americans greater flexibility against insurgent operations, it also allowed for wider discretion in implementing harsher tactics against the population.

MacArthur’s December 1900 proclamation advocating for harsher treatment of insurgents, relied on the legality of GO 100, representing a significant departure if not an outright reversal of the policy of benevolent assimilation.³⁵ While the Administration now officially sanctioned harsher tactics authorized by this Order, his proclamation was also an effort to legitimize the harsh treatment already being used by senior commanders.³⁶ Widely recognized in Europe as customary international law, GO 100 was enacted during the Civil War to explain the power of a military commander in conquered territory.³⁷ These powers include an extreme measure of punitive retaliatory actions which could be inflicted upon prisoners of war and even upon innocent noncombatants.³⁸ For example, direct participation in a guerrilla campaign or aiding and abetting the resistance movement subjected the offender to immediate retribution through property confiscation, imprisonment and even execution.³⁹

By late 1900, it was clear that soldiers were increasingly enforcing their own liberal interpretations of GO 100 with the express knowledge and even approval of senior military commanders.⁴⁰ In many of the districts, crop burning and property destruction increased and on many occasions, captured insurgents were summarily executed. One occasion, which typified this increased violence, involved Colonel Funston who relied on GO 100 when he ordered the

execution of twenty-four prisoners in retaliation for an American death. While the War Department demanded an investigation, Otis covered up actions such as these by senior officers which were becoming so prevalent that he wisely deduced that investigating one would open a Pandora's box and undoubtedly lead to other investigations.⁴¹ Such acts being practiced included widespread civilian crop destruction to starve the insurgents, torture of captured insurgents by the "water cure" and summary executions. While such techniques had a military purpose and were rarely employed gratuitously, they were nonetheless of brutal consequence to the Philippine people.

While soldiers were court-martialed for crimes in the Philippines, even these proceedings exemplified both the negative cultural views of the Filipinos and also the reckless disregard in which senior military leaders approved of harsh tactics. Between early 1899 through February 1901, a total of forty-four soldiers were tried and thirty-nine convicted for crimes including torture and shooting prisoners. Their sentences, however, included mere fines and reprimands, thus serving as encouragement for soldiers and commanders alike to engage in brutal pacification tactics with little consequence.⁴²

Senior officers such as Brigadier General Franklin J. Bell would also rely on GO 100 to wage unrestricted warfare. Bell believed it was necessary that war be brought to the people to make the war itself insupportable as possible, where living under such conditions "will soon become unbearable."⁴³ His beliefs were simple: "let acts, not words convey intentions."⁴⁴ In December 1901, just days before Maj Waller's fateful march into the interior of Samar, Bell issued his own circular order which reminded his troops that GO 100 allows his soldiers to "kill on sight, like other outlaws" persons such as *insurrectos* who have placed themselves outside the protection of the laws of war.⁴⁵

If the moral beliefs from the Americans were that Filipinos were less than human and undeserving of civilized warfare, it was the adaptation of GO 100 that served as the legal justification for the military to unleash sanctioned brutality. By the middle of 1901, incidents of crop and village destruction, torture and summary executions had become common operating procedure for the American military. However, it was the massacre at Balangiga that would truly galvanize the military spirit for revenge that opened the floodgates of destruction, torture and death.

The Balangiga Massacre; the Death of Benevolent Assimilation

The death of the benevolent assimilation policy can be said to have permanently died with the massacre at Balangiga on the island of Samar. In Balangiga, the town president, in July 1901, wrote to the U.S. Army headquarters in Manila requesting the help of American troops in Balangiga for protection against the *insurrectos*.⁴⁶ To the Americans still yearning for a successful benevolent assimilation policy, this request was seen as a concession that the Balangiganons desired to live peacefully and accept American intervention.⁴⁷ In reality, however, the town president wrote a letter six weeks earlier to General Lukban pledging to “observe a deceptive policy with them [Americans] doing whatever they may like, and when a favorable opportunity arises, the people will strategically rise against them.”⁴⁸

Upon their arrival in August, 1901, Captain Thomas Connell and his seventy-four soldiers of Company C, 9th U.S. Infantry were warmly greeted.⁴⁹ Captain Connell, a West Point graduate, took his role seriously as a diplomat and was concerned that his troops make a good impression in Balangiga.⁵⁰ He ordered his troops to refrain from using derogatory terms such as “googoo” and “nigger” and tried to foster a peaceful environment based on trust by banning the

carrying of firearms except in official duty such as guarding post or for official functions.⁵¹ He also prohibited the fraternization of his troops with the local women.⁵²

One of Captain Connell's chief projects was to improve the sanitary condition of the town by clearing the trash under the villager's huts and to clear the brush surrounding the town which offered cover in the event of an ambush. After a few days and even with the assistance of eighty townsfolk, it became apparent there were not enough people to accomplish this tremendous task.⁵³ The town president sensed an opportunity to import more fighters and vaguely told Captain Connell that he could bring in more natives from the countryside to aid in the work and to "work off some taxes."⁵⁴ Over the next two days, on September 26 and 27, a total of eighty additional husky laborers marched into Balangiga.⁵⁵

On the night of September 27, sentries noticed an unusual amount of activity at the local church with women hurrying into the church.⁵⁶ They were told by the locals that a cholera epidemic had claimed a great number of children in the surrounding area and that the bodies were being taken to the church.⁵⁷ However, many of these women were actually male *insurrectos* disguised in women's clothes and the women that were present were actually smuggling weapons into the church hidden in coffins under dead children.⁵⁸

At 6:30 the next morning the attack commenced while the soldiers of Company C gathered in the mess tent for breakfast. The church bells rung, conch shells whistled and the doors of the church burst open and out streamed the mob of bolomen waiting from the previous evening.⁵⁹ Survivors of the massacre recall being too stunned at first to react until a company sergeant rallied the soldiers and yelled, "they are in on us – get your rifles, boys!"⁶⁰

While the soldiers put up a gallant defense marked by individual acts of bravery and heroism, the estimated 600 *insurrectos* inflicted great damage. Of the original company, forty-

eight soldiers were killed in action, eventually died of wounds, or remain missing.⁶¹ When the remaining survivors escaped to the Basey garrison the next morning, the commander of Company G, Captain Edwin Bookmiller, quickly solicited volunteers to return to Balangiga.⁶² There they found bodies of U.S. soldiers mutilated with bolo slashes filled with strawberry jam and bodies decapitated.⁶³ The company captured twenty natives at the edge of the jungle and when asked what should be done with them, Capt Bookmiller responded, “That’s Company C’s business.”⁶⁴ The crash of the Krag rifles from the remaining members of Company C killed not only the prisoners but also the policy of benevolent assimilation. As they left Balangiga, one soldier prophetically stated, “They have sown the wind and they shall reap the whirlwind.”⁶⁵

The Whirlwind

To Major General Adna Chaffee who assumed supreme command over the military in the Philippines in July, 1901, the Balangiga massacre was the direct result of the soft and weak policy towards the Filipinos.⁶⁶ Chaffee foreshadowed the increased brutality that would be waged when he publically stated that war would be waged on the “whole Philippine people” who, according to Chaffee, were violating the laws of war.⁶⁷ The civil policies of benevolent assimilation would hereafter be replaced with a policy of “shot, shells and bayonets.”⁶⁸ A distinguished Civil War veteran, Chaffee spent twenty-five years as an officer in the calvary fighting Native Americans where he earned the reputation of a brutal fighter of Indians.⁶⁹ The Balangiga massacre sparked in Chaffee a personal motivation to authorize even more wide spread extreme measures against the remaining pockets of insurgent resistance.⁷⁰ Officially, Chaffee received a cable from the War Department instructing him to “take appropriate action immediately” to crush the remaining resistance on the island of Samar.⁷¹ Roosevelt, now President, instructed him “in no unmistakable terms” to use “the most stern measures to pacify

Samar.”⁷² As the victims of Balangiga had served under Chaffee in operations in China, he was glad to accommodate the President’s request and avenge their deaths.

Chaffee firmly believed that following Balangiga, the national mood at home and his senior leadership had given him *carte blanche* authority to conduct a brutal pacification campaign.⁷³ In response, he appointed some old calvary friends whom he could count on to conduct a brutal Indian-style campaign and not the “humanitarian warfare” being waged on his arrival.⁷⁴ One of these commanders was Brigadier General Franklin Bell who would command operations in Batangas. With Chaffee’s knowledge and approval, Bell ordered that the time had come to “fight fire with fire” and authorized the summary execution of Filipino prisoners for every American who was “murdered”.⁷⁵ Bell firmly believed that since it was impossible to recognize “the actively bad from only the passively so,” it was merely an inevitable consequence of war that “the innocent must generally suffer with the guilty.”⁷⁶ After herding civilians of Batangas into concentration camps, Bell systematically destroyed humans, crops, food stores, domestic animals, houses and boats.⁷⁷

Chaffee also appointed Brigadier General Jacob Smith who would command the 6th Separate Brigade for operations on Samar. Even considering the intolerable actions Bell was undertaking on Batangas, the appointment of Smith is said to have been one of the gravest blunders of the war.⁷⁸ After a dubious record in the Civil War, Smith’s temper and lack of ethics led to his being court-martialed - three times - for insubordination, conduct unbecoming an officer and for making false official statements⁷⁹. A veteran of the Wounded Knee massacre and well known for other Indian brutalities, he appropriately earned the nickname “Hell Roaring Jake.” He had a reputation for violent extralegal action, such as the time he attempted the summary execution of prisoners and would routinely fire on Filipino’s carrying white flags of

surrender.⁸⁰ It was a man of this moral character who was instructed by Chaffee to extract revenge for the Balangiga massacre.⁸¹

Brigadier General Hughes was commander of the Department of the Visayas' under which Smith operated. Like Chaffee, Hughes pushed Smith to exact vengeance for Balangiga and ordered him to "kill off the bands of savages who have hibernated in the brush ... simple burning appears to be no good, they want to be stayed with and either killed or domesticated."⁸² Smith arrived on Samar following months of an already brutal campaign by Hughes whose troops were ordered to kill guerrillas and civilians alike, burn villages, destroy crops and slaughter livestock.⁸³

Major Littleton Waller, First Brigade, USMC and his three hundred Marines were detached under Smith's command. During their first few visits, Smith made clear his intentions for Samar when he told Maj Waller that he wanted no prisoners. He ordered Maj Waller and his Marines "to kill and burn, the more you kill and burn the better you will please me." Specifically, Smith ordered Waller to kill all persons capable of bearing arms in actual hostilities against the United States.⁸⁴ When Maj Waller asked for clarification, Smith responded that anyone over ten years of age capable of bearing arms should be shot.⁸⁵ During a later inspection of Balangiga when he saw that wild hogs had been rooting up the bodies of the dead members Company C, Smith became enraged and hollered again in the presence of others to "Kill and burn! The more you kill and burn, the better you will please me. I want no prisoners, do you understand?"⁸⁶ A few weeks later in early December, 1901, Smith sent Maj Waller his final order, "The interior of Samar must be made a howling wilderness."⁸⁷ Most importantly and consistent with the liberal interpretations of GO 100 being practiced in the Philippines, Smith instructed Maj Waller and Capt Porter to "punish treachery with death."⁸⁸

Into the “Howling Wilderness”

It is clear that Maj Waller did not take Smith's orders as open authority for gratuitous killing and pillage much like how his superiors were conducting operations elsewhere. During a meeting with one of his subordinate commanders, Maj Waller made it clear that his unit would not make war on women and children and ensured they understood they would make war only on men capable of bearing arms.⁸⁹ Even though he was later called the “Butcher of Samar,” early examples of his conduct at least demonstrate his unwillingness to mirror the brutal tactics that were presently being employed in the Philippines. On one occasion, for example, Maj Waller uncovered a plot very similar to the massacre of Balangiga, where five hundred natives planned to surround his camp and slaughter his entire command. After capturing many of the ring leaders, Maj Waller would have been more than justified in executing them for their treacherous deeds according to the orders of Smith. Rather, he merely imprisoned them.⁹⁰

On December 28, 1901, Maj Waller set off with fifty Marines and thirty native guides for a failed expedition into the interior of Samar. After a few days the expedition was lost and the terrain and weather began to take their toll. When food and supplies were depleted, Waller decided to split his force to reach a supply base. After a few more days, Waller in the remaining group noted that his men were “becoming ill, their clothing hung on them in wet shreds, their bare feet were swollen and bleeding and their demeanor was dejected and hopeless.”⁹¹ Waller also began to experience difficulties with the native guides and carriers. The local guides began to refuse the Marine's orders for work and assistance, including refusing to ferry orders back and forth between the two groups, effectively cutting them off from each other.⁹² Maj Waller awoke one evening to find that a native guide had stolen his bolo and was forced to hold the man at gunpoint until he returned it. The natives also failed to tell the Marines about a rising river when

bedded down, nearly drowning the squad, while the locals slept safely up a hill. The guides were hiding food, demonstrated by their apparent good health, while the Marines wilted away. A handful of the local guides even attempted to murder one of the Marine lieutenants, stabbing him in the back with a bolo knife.⁹³ On January 18, 1902, they were rescued. In all, ten Marines perished during this expedition.

As Waller was recovering in a hospital room from injuries sustained during the expedition he received a report about the treacherous behavior of the native scouts who were now being held as prisoners.⁹⁴ Waller listened to the reports and consulted with his officers who unanimously recommended their execution.⁹⁵ Waller called in the most senior native guide to question him about the allegations. Just two weeks earlier during the fateful march, Waller was informed that this particular guide, named “Victor”, was also rumored to have led a squad of insurgents at Balangiga and was now rumored to have been plotting to kill Waller.⁹⁶ Waller realized this was true as it was Victor who stole his bolo in the middle of the night.⁹⁷ When questioned, Victor could not answer and simply stood there and trembled.⁹⁸ During this inquiry, Waller was also told that two natives with the eleven prisoners were not involved and held by mistake. Waller released these two natives and, after deliberating, decided to execute the eleven prisoners for treachery and treason.⁹⁹

Waller’s actions in late January, 1902 could not have come at a worse time.¹⁰⁰ Calls from the American public to investigate the mounting evidence of harsh conduct in the Philippines were increasing and on January 28, 1902, Senate hearings were convened. One of the people to testify was Governor Taft. With shocking honesty, Taft conceded that cruelties had been inflicted by U.S. soldiers and that torture and killings were prominent throughout the islands.¹⁰¹ In an attempt to mitigate the perception that any violence was actually sanctioned by the

Administration, Secretary Root published the results of forty-four courts-martials convened for violations of the humanitarian prescriptions of GO 100, covering the period from early 1899 to February 8, 1901.¹⁰² Of the thirty-nine convictions for crimes such as torture and shooting prisoners, most received lenient sentences such as fines and reprimands.¹⁰³ While these sentences undoubtedly reflected the dehumanizing culture of the military, the light punishments caused more consternation back in America.¹⁰⁴

By now Secretary Root was well aware of allegations of abuses and the potential for political embarrassment.¹⁰⁵ Root noted that during the first two years of the war, commanders issued periodic reminders to their troops to treat the natives humanely.¹⁰⁶ By the fall of 1900, however, these directives had stopped all together with the Administration's new sanctioned policy of increased violence.¹⁰⁷ In early January 1902, Taft hand delivered to Root a damning report from Major Cornelius Gardener, a military governor in the Philippines, who accused U.S. troops of burning villages to deprive the guerrillas of shelter, torturing Filipinos to obtain information and generally treating all natives as if they were insurgents.¹⁰⁸ Had Root truly been concerned about these allegations, now was his opportunity for an investigation. Rather, he waited weeks before doing anything and even then, merely sent his request by boat instead of cable to Chaffee to conduct a "careful inquiry."¹⁰⁹ Root mistakenly believed he bought the White House more time before this issue became even a larger public issue.¹¹⁰

When Root's memorandum to Congress on the low number of courts became public record, newspapers seized on the opportunity to blast the Administration for allowing such heinous crimes to be punished with light sentences.¹¹¹ The abuse scandal and political ramifications were undoubtedly becoming too large to ignore any further. Maj Waller had the unfortunate timing of having his incident at the forefront of the Administration's attention and,

by the end of February, Secretary Root took the unconventional step of cabling Chaffee to court-martial Waller as soon as possible.¹¹²

Maj Waller's trial began on March 17, 1902, where he admitted to ordering the executions, but denied it constituted murder.¹¹³ The crux of his defense included the legality of his actions under GO 100. Independent witnesses confirmed that General Smith ordered Maj Waller to kill and burn and to punish treachery with death. After eighteen days of trial, the court-martial panel took less than thirty minutes to deliberate Maj Waller's fate before finding him not guilty of murder.¹¹⁴

A slew of courts-martials followed. Lieutenant Day, whom Maj Waller ordered to carry-out the executions, was acquitted of murder for following Waller's orders.¹¹⁵ After two acquittals for murder, the Administration changed tactics and decided to prosecute General Smith merely for conduct unbecoming an officer for issuing the fateful orders to Waller. He was found guilty and sentenced to an admonishment.¹¹⁶ In his endorsement to approve the sentence, Secretary Root summed up the previous four years of conflict marked by the cultural hatred and bias of the Americans towards the Filipinos. In his plea for leniency, Root stated that Smith's actions were almost understandable considering the "conditions of warfare with cruel and barbarous savages."¹¹⁷

When viewed from a current perspective, Maj Waller's actions seem barbaric and shocking. However, at that time, the military legal system was simply not ready to accept his actions as criminal. This proposition is supported by two points. First is the total lack of prosecutions for similar alleged misconduct from early 1899 until early 1902. Even though it was known by senior leadership that many soldiers, including senior officers, were engaged in gratuitous violence, no action was taken to discipline them or stop such tactics. Even when

soldiers were prosecuted and convictions obtained, the punishments amounted to nothing more than a slap on the wrist. Second, all but one of the court-martials following Maj Waller were also acquittals. Maj Glenn faced two courts-martial, one for murdering seven Filipino civilians whom he had impressed as guides and another for rampant use of the “water cure” torture technique. During both trials he argued that GO 100 sanctioned his actions as did his orders by higher military authorities.¹¹⁸ In both cases the courts agreed refused to hold him criminally responsible for his actions. Similarly, Captain James Ryan was acquitted for torturing Filipinos when the court concluded that his actions were lawful.¹¹⁹ Thus, even after the issue of torture and executions were at the forefront of the American public’s attention, military courts were still unwilling to criminalize this misconduct.

The political motivations to prosecute Maj Waller cannot be ignored. Secretary Root and General Chaffee desired to end the war as quickly as possible through all available means, evidenced through their silence on the atrocities being committed. Certainly there were more well-known and egregious incidents that could have been acted upon if they were not sanctioning such conduct, such as General Funston bragging to reporters about stringing up thirty-five civilians, or Maj Glenn making forty-seven prisoners kneel and “repent of their sins” before ordering them bayoneted and clubbed to death, just to name a few.¹²⁰ When Congress asked for information, the fact that Root could not report a court-martial for the entire previous year is a testament of how little the Administration viewed the Filipino and what they were willing to compromise in order to end the war.

Furthermore, the contrasts in charges between Maj Waller and previous court-martials are significant. Maj Waller’s trial was different; of the completed court-martials reported by Root, all involved certain provisions of GO 100 forbidding “cruelty, looting, and like crimes” as *wanton*

violence against civilians.¹²¹ Maj Waller, however, was apparently the first officer to be prosecuted not for gratuitous violence, but actions based upon superior orders or actions involving a viable defense of the principle of military necessity. This represents a *political* shift and not necessarily a legal justification to pursue Maj Waller's actions with such fervor.

Lessons Learned and the Applicability to Modern Operations

When viewed in today's political and cultural climate, the actions of Maj Waller undoubtedly shock the conscious and cry for the fulfillment of justice. Equally shocking were the overt racist fundamental beliefs of Senior Administration Officials towards the entire Philippine race and the role those beliefs played in the orders of senior military commanders for destruction and executions. In the hundred and eight years since the conclusion of the war historians have failed to give significant analysis to the relation between these factors, but are nonetheless quick to condemn Maj Waller for his actions as a mere military anomaly in an otherwise "successful" insurgency campaign.

Maj Waller was one individual thrust into actions towards the end of a war, a war marked by sanctioned and ordered harsh and brutal tactics against a faceless enemy. His command came on the heels of the Balangiga massacre where calls for revenge motivated his superiors to order him to "kill and burn" entire populations. All this occurred before the international recognition that soldiers may not hide behind the defense of "following orders" in order to escape prosecution. Indeed, backed by the legality of GO 100, Maj Waller would have undoubtedly been justified in executing General Smith's intent as ordered. The fact that Waller refrained from such wide-spread killings is a testament to his restraint and ability to differentiate between insurgents and civilians, giving further defense to his actions in executing eleven native guides for treason and treachery.

For purposes of this paper, more important than the legality of widespread brutal tactics against the insurgents and civilian population, are the cultural factors motivating the decision to employ such tactics. During the Philippine War, senior administration and military officials viewed the Filipino as less than human, an object that could not appreciate America's intentions of salvation which cultivated something more dangerous than hatred. On the battlefield, military commanders were quick to conclude the Filipino as incapable of "civilized warfare" thus forfeiting civilized protections. With such beliefs it was easy to blur the line between accepted tactics in targeting insurgents while protecting the civilian population. These beliefs precipitated the orders from military commanders to use harsh tactics against both the insurgents and civilian population. Without respect for the enemy, the military was quick to accept the dehumanizing beliefs of American society, where it became too easy to kill "niggers" and "googoes".

While such widespread hatred and cultural ignorance does not exist in today's political and military climate, modern soldiers may nonetheless dehumanize modern enemies. Facing peoples of different cultures and ethnicity, an inexperienced soldier may still blur the distinction between uncertainty and respect, undoubtedly pushing the level of accepted warfare in the wrong direction. Lessons from the Philippine War are timeless and serve as an example of what may happen when such beliefs are allowed to fester amongst the ranks and permeate all levels of command. Modern battlefield commanders must appreciate this risk and regardless of strategies used to battle insurgents or terrorists, they will continue to face a two-pronged challenge of fighting, with respect. Allowing any level of degradation by viewing the enemy as less than human will have a cancerous effect on military operations, justifying each brutal action one after another.

Furthermore, this will not be the last time our military forces are betrayed on the battlefield or faced with an enemy that fails to adhere to the standards or rules of international warfare. Indeed, for the past twelve years our military has faced a hidden enemy, one cloaked in the disguise of civilian friendship and appeasement only to strike when the time is right.¹²² Terrorist groups such as Al-Qaeda will continue to fight in violation of international law by utilizing civilians who serve as direct participants in hostilities and by the use of unlawful combatant fighters.¹²³ Lessons learned in the Philippine War continue to provide invaluable guidance to our military. Tactics and strategies must derive from sound military theory instead of cultural bias and ignorance or the instinct to extract revenge for illegal killings from insurgent fighters. Military commanders and leaders must continue to recognize the strategic impact that harsh and brutal reactions from our forces will have.¹²⁴ While our military forces today do not have the sanctioned and ordered brutality against insurgents and civilians as in the Philippine War, human emotions such as the call for revenging comrades will forever pose a risk to not only military operations, but also international relations.

¹ *Correspondence Relating to the War with Spain and Conditions Growing out of the Same, Including the Insurrection in the Philippine Islands*, Government Printing Office, 1902, p. 676.

² Brian McAllister Linn, *The Philippine War, 1899-1902*, University Press of Kansas, 2000, p. 5.

³ Brian McAllister Linn, *The U.S. Army and Counterinsurgency in the Philippine War, 1899-1902*, The University of North Carolina Press, 1989, p. 1.

⁴ *Correspondence Relating to the War with Spain*, p. 646. In a letter dated May 15, 1898 to President McKinley, MG Merritt voiced his concern over this lack of guidance: "I do not yet know whether it is your desire to subdue and hold all of the Spanish territory in the islands, or merely to seize and hold the capital."

⁵ Linn, *The Philippine War*, p. 5.

⁶ *Correspondence Relating to the War with Spain*, p. 859.

⁷ Linn, *The Philippine War*, p. 31. Interestingly, at least one historian opines that the policy of benevolent assimilation was, in and of itself, a declaration of hostilities against the Filipinos, a "de facto declaration of war." Bob Couttie, *Hang the Dogs*, New Day Publishers, New York, 2004, p. 56. While interesting in an academic setting, this policy was in fact one of conciliation more than a call for active military operations, as is clearly demonstrated in later years as the articulated policy shifts to more aggressive tactics.

⁸ James H. Blount, *American Occupation of the Philippines, 1898-1912*, The Knickerbocker Press, 1913, p. 139. Interestingly, Mr. Blount opines that this policy was the result of faulty intelligence from MG Elwell Otis, MG Merritt's subordinate who, due to Merritt's delay in arrival to the Philippines, controlled early operations. Mr. Blount, who served as an officer in the Philippines states that there was a "total misapprehension of conditions in the islands" when President McKinley drafted that policy as MG Otis lead the administration to believe that the Filipino people were not bent on independence and would welcome American interventionism.

⁹ Guenael Mettraux, *US Courts-Martial and the Armed Conflict in the Philippines (1899-1902): Their Contribution to National Case Law on War Crimes*, Journal of International Criminal Justice, Oxford University Press, 2003, p. 135.

¹⁰ Stuart Creighton Miller, *Benevolent Assimilation, The American Conquest of the Philippines, 1899-1903*, Yale University Press, New Haven, PA, 1982, p. 31.

¹¹ *Ibid.*, p. 59: "...without exception soldiers and also many officers, refer to the natives in their presence as 'niggers.'"

¹² *Ibid.*

¹³ Linn, *The Philippine War*, p. 36.

¹⁴ Miller, *Benevolent Assimilation*, p. 67.

¹⁵ *American Imperialism and The Philippine Insurrection; Testimony taken from Hearings on Affairs in the Philippin Islands before the Senate Committee on the Philippines – 1902*, Edited by Henry Graff, Little Brown and Company, 1969, p. viii.

¹⁶ Miller, *Benevolent Assimilation*, p. 152. See also, Joseph P. McCallus, *Gentleman Solider*, Texas A&M University Press, 2004, p. 37.

¹⁷ McCallus, *Gentleman Solider*, p. 37.

¹⁸ Miller, *Benevolent Assimilation*, p. 55.

¹⁹ *Ibid.*, 64.

²⁰ *American Imperialism and The Philippine Insurrection*, p. 95.

²¹ *Ibid.*, p. 171.

²² McCallus, *Gentleman Solider*, p. 38.

²³ *Ibid.*, p. 39.

²⁴ See Miller, *Benevolent Assimilation*, p. 162: “It appeared that the entire American army, from private to general, demanded severe retaliation for the constant sniping, small ambushes, and clever booby traps...”

²⁵ Gregg Jones, *Honor in the Dust, Theodore Roosevelt, War in the Philippines, and the Rise and Fall of America’s Imperial Dream*, New American Library, 2012, p. 204.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.* Jones writes that as the war lingered and when Roosevelt took over as President, “the most controversial episode in America’s emergence – the conquest of the Philippines – was nearly complete as harsh campaigns sanctioned by Roosevelt extinguished the last embers of rebellion.” *Honor in the Dust*, p. 270.

³⁰ *Ibid.*, p. 270: “... harsh campaigns sanctioned by Roosevelt extinguished the last embers of rebellion.”

³¹ Joseph L. Schott, *The Ordeal of Samar*, The Bobbs-Merrill Company, Indianapolis, IN, 1964, p. 3 and 29.

³² Miller, *Benevolent Assimilation*, p. 162; another senior officer noted that the fault with the policy was that soldiers treated the Filipinos as if they were civilized, when what was required were the “remedial measures that provided successful with the Apaches.” *See also* Linn, *The Philippine War*, p. 211.

³³ Linn, *The Philippine War*, p. 213.

³⁴ Miller, *Benevolent Assimilation*, p. 163.

³⁵ General Order No 100, “Instructions for the government of armies of the United States in the field” issued by the Adjutant General’s Office, War Department, Washington, 24 April 1863, are reprinted at Appendix D, Letter from the Secretary of War Relative to the Reports and Charges in the Public Press of Cruelty and Oppressive Exercise by our Soldiers toward Natives of the Philippines, SD 205, 57th Cong., 1st sess., pt. 1, 23-24.

³⁶ Linn, *The U.S. Army and Counterinsurgency*, p. 24.

³⁷ Mark Oswald, *The “Howling Wilderness” Courts-Martial of 1902*, U.S. Army War College, Carlisle Barracks, PA, 2001: “The manual achieved instant fame abroad, and was adopted virtually intact by the armies of Germany, Great Britain and France.” This was the same order that General Sherman implemented during his bloody march through Atlanta.

³⁸ The principle of military necessity are those “measures which are indispensable for the securing the ends of the war” and “admits of all direct destruction of life or limb of armed enemies.” (Art 14) It allows for the destruction of personal property and homes, withholding of sustenance or means of life from the enemy and even starvation. (Art 17) It presupposes that civilians of a hostile country are hostile and “as such is subjected to the hardships of war.” (Art 21) Retaliation for war crimes by guerillas or civilians alike are authorized. (Art 28)

³⁹ GO 100, Article 85: war-rebels are persons within an occupied territory who rise in arms against the occupying or conquering army, or against the authorities established by the same. If captured, they may suffer death, whether they rise singly, in small or large bands, and whether called upon to do so by their own, but expelled, government or not. They are not prisoners of war; nor are they if discovered and secured before their conspiracy has matured to an actual rising or to armed violence.

⁴⁰ Linn, *The Philippine War*, p. 212.

⁴¹ Miller, *Benevolent Assimilation*, p. 89.

⁴² *Letter from the Secretary of War Relative to the Reports and Charges in the Public Press of Cruelty and Oppression Exercise by our Soldiers toward Natives of the Philippines*, SD 205, 57th Cong., 1st sess., pt., pt. 1-2.

⁴³ Blount, *The American Occupation of the Philippines*, p. 390.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, p. 387.

⁴⁶ Reynaldo Imperial, *Balangiga and After*, paper presented at the Balangiga Roundtable Conference, 1998, UP-CIDS Chronicle, p.1.

⁴⁷ *Ibid.*

⁴⁸ Quoted in John R.M. Taylor, *The Philippine Insurrection Against the United States* (Pasay City, Philippines: Eugenio Lopez Foundation, 1971), Exhibit 1350, cited by Greg Jones, *Honor in the Dust; Theodore Roosevelt, War in the Philippines, and the Rise and Fall of America's Imperial Dream*, New American Library, New York, NY, 2012, p. 230.

⁴⁹ James Taylor, *The Massacre of Balangiga*, McCarn Printing, Joplin, MO, 1931, p. 2.

⁵⁰ Imperial, *Balangiga and After*, writes on p. 2, that Captain Connell “pursued President McKinley’s benevolent assimilation policy with a humane touch and welcomed the opportunity to test the validity of the policy in Balangiga.”

⁵¹ Miller, *Benevolent Assimilation*, p. 201.

⁵² *Ibid.*, p. 200.

⁵³ Imperial, *Balangiga and After*, p. 24. Captain Connell ordered the townspeople to comply with this sanitary project but after their repeated failure, his soldiers rounded up eighty able bodied males and imprisoned them in tents until the project was complete. Some historical works point to this treatment as the reason for the massacre but it is clear from the *Presidente's* early plans and intent, the massacre was preordained through his requests that U.S. troops be stationed in Balangiga.

⁵⁴ Schott, *The Ordeal of Samar*, p. 24.

⁵⁵ *Ibid.*, p. 31.

⁵⁶ *Ibid.*, p. 33.

⁵⁷ Miller, *Benevolent Assimilation*, p. 202.

⁵⁸ Schott, *The Ordeal of Samar*, p. 33.

⁵⁹ *Ibid.*

⁶⁰ Taylor, *The Massacre of Balangiga*, p. 6.

⁶¹ Facts Concerning the Massacre of Company C, Ninth Infantry, at Balangiga, Samar, September 28, 1901, from Colonel E.G. Payton, Commander Ninth Infantry, are contained in Taylor, *The Massacre of Balangiga*, p. 38.

⁶² Schott, *The Ordeal of Samar*, p. 52.

⁶³ *Ibid.*, p. 54.

⁶⁴ *Ibid.*, p. 55.

⁶⁵ *Ibid.*

⁶⁶ Schott, *The Ordeal of Samar*, p. 62.

⁶⁷ Miller, *Benevolent Assimilation*, p. 205.

⁶⁸ Miller, *Benevolent Assimilation*, p. 205. While theatre commanders had issued periodic reminders to their troops to treat natives humanely, these types of directives stopped by the fall of 1900, around the time more pressure was being made to win the war as quickly as possible.

⁶⁹ Linn, *The Philippine War*, p. 218.

⁷⁰ *Ibid.*, p. 219.

⁷¹ Schott, *The Ordeal of Samar*, p. 65.

⁷² Miller, *Benevolent Assimilation*, p. 206.

⁷³ *Ibid.*, p. 207.

⁷⁴ Miller, *Benevolent Assimilation*, p. 196. Chaffee's attitude and acceptance of brutal tactics are reflected when he privately disclosed to one journalist, "if you hear of a few Filipinos more or less being put away don't grow too sentimental over it."

⁷⁵ *Ibid.*, p. 207. Mr. Miller writes that even more damning than Bell's unequivocal orders were the endorsements of them by higher-ranking officers. Chaffee wrote that "personal contact with the people, a knowledge of their methods and sentiments make [Bell's tactics] necessary."

⁷⁶ *The Issuance of Certain Orders in the Philippines*, S. Doc. 347, 57th Cong., 1st Sess.

⁷⁷ Miller, *Benevolent Assimilation*, p. 208. Cultural and racial hatred continued to permeate military operations especially following the massacre of Balangiga, where the thirst for vengeance masked the reality of brutal tactics against civilians. The destruction of entire villages were thus reduced to the sanitized reasoning that the average native house cost no more than four dollars to build. As Mr. Miller writes, "In the cold parlance of cost-benefit analysis, these tactics were the cheapest means of producing a demoralized and obedient population." The media back home shared these beliefs as some news outlets opined that such tactics were overdue and necessary since "we are not dealing with a civilized people. The only thing they know and fear is force, violence, and brutality, and we give it to them." See also *Philadelphia Ledger*, Nov. 19, 1900, as cited in S. Doc. 166, 57th Cong., 1st Sess., p. 2.

⁷⁸ Linn, *The Philippine War*, p. 312.

⁷⁹ David L. Fritz, *Before the "Howling Wilderness": the Military Career of Jacob Hurd Smith, 1862-1902*, *Military Affairs* 43 (December 1979), p. 187. Mr. Fritz also points out that Jacob Smith also abused his military position as a wartime recruiter to engage in profiteering through recruit bounties and speculation in gold, diamonds and whiskey.

⁸⁰ Linn, *The Philippine War*, p. 312; see also Miller, *Benevolent Assimilation*, p. 238.

⁸¹ Linn, *The Philippine War*, p. 314.

⁸² *Ibid.*, p. 313.

⁸³ Jones, *Honor in the Dust*, p. 227.

⁸⁴ Schott, *The Ordeal of Samar*, p. 71.

⁸⁵ *Ibid.*, p. 72.

⁸⁶ *Ibid.*, p. 76.

⁸⁷ Smith also told reporters that he intended to set the entire Island of Samar ablaze and would probably wipe out most of its population. Miller, *Benevolent Assimilation*, p. 212.

⁸⁸ Schott, *The Ordeal of Samar*, p. 221.

⁸⁹ *Ibid.*, p. 76.

⁹⁰ *Ibid.*, p. 97.

⁹¹ *Ibid.*, p. 109.

⁹² *Ibid.*, p. 110.

⁹³ *Ibid.*, p. 110.

⁹⁴ *Ibid.*, p. 138.

⁹⁵ *Ibid.*, p. 140. Scholar Brian Linn is quick to dismiss efforts by Waller to understand the facts and believed that “neither then nor since has any evidence emerged to prove that any of his victims were guilty...” *The Philippine War*, p. 312. However, while a debate may ensue as to the level of investigation, Waller presented evidence, with nothing to the contrary, that he did in fact conduct an investigation. During his trial he stated, “As the representative officer responsible for the safety and welfare of my men, after investigation and from the information I had, considering the situation from all points, I ordered the eleven men shot.” Furthermore, the guide’s actions, if believed to have been treacherous were certainly consistent with the tactics of deceit and with the proclamation of the insurrection leader, General Aguinaldo who, in early 1899, encouraged his fighters to gain the trust of the Americans only to strike them down when the opportunity presented itself. See *American Imperialism and The Philippine Insurrection*, p. 28-29.

⁹⁶ Schott, *The Ordeal of Samar*, p. 130.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*, p. 141. At his court-martial, Maj Waller stated “Had I known at the time who he really was I should never have taken him on the march. When I learned of the plot and heard everything I sent him out and had him shot. His offense to me was not his attempt on my life, it was his betrayal of the trust placed in him ... in his plot to massacre the men under my command.”

⁹⁹ To this day there is controversy over the total number executed. During Waller’s court-martial, one of his Lieutenants testified that Waller also ordered him to execute a twelfth prisoner earlier in the day. Waller testified that he did not give this order and only admitted to executing eleven prisoners.

¹⁰⁰ *Ibid.*, p. 151: “At home in the United States the political climate was so charged with electricity that the public airing of another scandal involving cruelty to natives in the Philippines was bound to set off a violent storm.”

¹⁰¹ Jones, *Honor in the Dust*, p. 272-73.

¹⁰² *Letter from the Secretary of War Relative to the Reports and Charges in the Public Press of Cruelty and Oppression Exercise by our Soldiers toward Natives of the Philippines*, SD 205, 57th Cong., 1st sess., pt. 1-2.

¹⁰³ *Ibid.*, Appendix F.

¹⁰⁴ Schott, *The Ordeal of Samar*, p. 166. When the *Philadelphia North American* seized upon this report, they astutely noted that only ten officers were court-martialed and the last court of any accused was over a year ago. As Mr. Schott writes, “The newspaper pointed out that the seven officers convicted had been charged with such heinous crimes as looting, murder and torture – ‘crimes punishable by death,’ – the editorial writer orated – yet the convictions only resulted in fines and reprimands.”

¹⁰⁵ Jones, *Honor in the Dust*, p. 277. Mr. Jones writes that given all the information about torture and other abuses that came across Root’s desk, virtually all of it from friendly sources, the conclusion of Root’s authorized biographer, Philip C. Jessup, that the secretary of war “must have had some indication that there were cases of torture and cruelty” is an understatement.

¹⁰⁶ *Ibid.*, p. 275.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*, p. 278.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*, p. 278.

¹¹¹ Schott, *The Ordeal of Samar*, p. 166.

¹¹² *Ibid.*

¹¹³ *Ibid.*, p. 186.

¹¹⁴ *Ibid.*, p. 277.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*, p. 278.

¹¹⁷ Miller, *Benevolent Assimilation*, p. 255.

¹¹⁸ Jones, *Honor in the Dust*, p. 342.

¹¹⁹ *Ibid.*

¹²⁰ Miller, *Benevolent Assimilation*, p. 189.

¹²¹ Schott, *The Ordeal of Samar*, p. 165. The phrase “cruelty, looting, and like crimes” is language used by Secretary Root in addressing Congress. Article 44 of General Order 100 states: “All wanton violence committed against person in the invaded country; all destruction of

property not commanded by the authorized officer; all robbery, all pillage or sacking, even after taking a place by main force; all rape, wounding, maiming or killing of such inhabitants – are prohibited ...”

¹²² Close parallels to modern wars in Iraq and Afghanistan demonstrate a similar methodology between insurgent fighters. General Funston’s remarks while speaking in 1900 could equally apply today when he discussed the difficulties in “exterminating the enemy” because of the fact that “when pursued too closely they hide their rifles and scatter to their homes, and no longer wear uniforms or any distinctive insignia but use the dress of noncombatants of the country.” *San Francisco Call*, Sept. 20, 1900.

¹²³ In *New Battlefields Old Laws; Critical Debates on Asymmetric Warfare*, Eric Talbot Jensen argues that what is needed today is a modernized view of “unlawful combatants” and “direct participation in hostilities” that takes into account the modern battlefield where fighters are members of armed groups analogous to modern state militaries and where civilians purposely attack from within civilian populations and hide behind their protected status to frustrated legitimate targeting efforts. Columbia University Press, 2011, p. 86.

¹²⁴ In approving the sentence of Brigadier General Jacob Smith, President Roosevelt cautioned against having senior officers encourage their subordinates to violence. Although he used the phrase “loose and violent talk” and thus failed to recognize the systematic and sanctioned violence at all levels of his command, Roosevelt’s caution to senior commanders that their example will motivate their subordinates is just as true today. S. Doc. 213, 57th Cong. 2nd Session, p.5.

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